Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

ANTONIO RIOS,
Petitioner,
vs.
LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION ONE

PETITION FOR WRIT OF CERTIORARI

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36pp

QUESTIONS PRESENTED

1. May the appellate court of California interpret statutory and case law authority in a manner that abridges a citizen's federal constitutional rights?

2. Whether California's procedures for entry of a no contest plea in dependency court proceedings deprive citizens of due process of law?

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No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1995

ANTONIO RIOS,
Petitioner,
vs.
LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,
Respondent.

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Mr. Antonio Rios, respectfully requests and seeks certiorari to review the judgment of the Court of Appeal of California.

I

OPINION BELOW

The opinion of the Court of Appeal of California, Second Appellate District is reprinted in Appendix A. The order denying the petition for rehearing before the Court of Appeal is reprinted in Appendix B. The California Supreme Court's denial of review is reprinted in Appendix C. The excerpts from the Reporter's Transcript are found in Appendix D.

II

JURISDICTION

This case involves a dependency court judgment which was based on a defective petition. In spite of the fact that the Petitioner, Antonio Rios, made valid and timely jurisdictional challenges to the dependency court's jurisdiction, said challenges were disregarded and the court proceeded without first obtaining jurisdiction in violation of the Petitioner's due process rights as guaranteed by the Fourteenth Amendment to the United States Constitution.

The Court of Appeal entered its judgment on October 31, 1995. The California Supreme Court denied Mr. Rios' Petition for Review on January 17, 1996. This Court has jurisdiction by Title 28, Section 1257 (a) of the United States Code. 28 U.S.C. § 1257(a).

III

CONSTITUTIONAL AND STATUTORY PROVISIONS

The United States Constitution:

The Ninth Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The California Constitution:

Article III, Section 1

Sec. 1. The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land.

California Welfare and Institutions Code Section 300:

Any Minor who comes within any of the following descriptions is within the jurisdiction for the juvenile court which may ajudge that person to be a dependent child of the court:

(a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. . . .

(b) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the minor, or the willful or negligent failure of the minors' parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the minor has been left, or by the willful or negligent failure of the parent or guardian to provide the minor with adequate food, clothing, shelter or medial treatment, or by the inability of the parent or guardian to provide regular care for the minor due to the parent's or guardian's mental illness, developmental disability, or substance abuse. . . .

(c) The minor is suffering emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by sever anxiety, depression, withdrawal, or untoward aggressive behavior toward self or other, as a result of the conduct of the parent or guardian. . . .

(d) The minor has been sexually abused . . . .

(e) The minor has been subjected to an act or acts of cruelty by the parent . . . .

California Welfare and Institutions Code Section 332:

A petition to commence proceedings in the juvenile court to declare a minor a ward or a dependent child of the court shall contain all of the following:

. . . .

(c) The code section and the subdivision under which the proceedings are instituted. . . .

. . . .

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted . . . .

IV

STATEMENT OF THE CASE

On January 15, 1992, a petition was filed in Dependency Court in Los Angeles, California to have Maria R., Betty R., Alma R. and Helen C. declared dependent children under section 300 of the Welfare and Institutions Code. It was the Appellant's position initially that the Dependency Court lacked jurisdiction to hear the case due to the fact that the trial court below based its jurisdictional finding on a petition with insufficient charging allegations. The petition was basically a reiteration of Section 300 of the California Welfare and Institutions

Code without the requisite facts as required by Section 332 subsection (f) of the same California Code. At the jurisdictional hearing of January 16, 1992, Mr. Rios' attorney challenged the jurisdiction of the court based on the insufficiency of the petition to state facts upon which jurisdiction would lie (R.T. p. 4, lines 15-28).

The trial court assumed jurisdiction based on the County Counsel's indication that an amended petition would be filed (R.T p. 8 lines 13-21). On page 16 of the Reporter's Transcript lines 2-4 the County Counsel acknowledges that the petition was defective and that an amended petition needed to be filed. Jurisdiction either attaches at the moment of the jurisdictional hearing or it does not. Jurisdiction cannot be obtained on a mere promise to file an amended petition sometime in the future. An amended petition was never filed in the case. In ruling that jurisdiction attached on the basis of a clearly defective petition, the court violated the notice requirements guaranteed by the due process clause of the Fourteenth Amendment of the United States Constitution.

On page 16 of the Reporter's Transcript on lines 5-10 the trial court acknowledges that an amended petition would be necessary so that Mr. Rios' attorney would be placed on notice as to the specific allegations. This part of the record clearly shows that the trial court recognized the fact that the notice requirements of the due process clause had not been satisfied but that nevertheless decided that notice sometime in the future would comply with procedural due process. Clearly such reasoning cannot pass constitutional muster. In order to satisfy the constitutional safeguards guaranteed by the Fourteenth

Amendment of the U.S. Constitution, adequate notice must be given at the time of the jurisdictional hearing.

V

JURISDICTION CAN ATTACH ONLY IF THE PETITION UPON WHICH IT IS BASED AFFORDS ADEQUATE NOTICE AND AN OPPORTUNITY TO BE HEARD

The due process clause of the Fourteenth Amendment of the U.S. Constitution requires that parents be afforded notice and an opportunity to be heard at a jurisdictional hearing in a Juvenile Court dependency hearing. U.S. Const., amend. XIV.

In the case at hand the record clearly reflects that jurisdiction was erroneously based on insufficient charging allegations which did not comply with California's own statutory requirements.

VI

THE FUNDAMENTAL AND CRUCIAL RIGHT TO CONCEIVE AND TO RAISE ONE'S CHILDREN IS PROTECTED BY DUE PROCESS GUARANTEES BY THE EQUAL PROTECTION CLAUSE AND THE NINTH AMENDMENT

In *Stanley v. Illinois* (1972) the Court recognized the fact that parental rights to conceive and to raise one's

children have been deemed essential. *Meyer v. Nebraska*, 262 U.S. 390, 399, 67 L.Ed. 1042, 1045, 43 S.Ct. 625, 29 ALR 1446 (1923). In *Skinner v. Oklahoma*, 316 U.S. 535, 541, 86 L.Ed. 1655, 1660, 62 S.Ct. 1110 (1942) the Court recognized that such rights are basic civil rights of man and that such rights are far more precious than property rights. As the Court states in *Stanley v. Illinois*, the integrity of the family unit has found protection in the due process clause of the Fourteenth Amendment, *Meyer v. Nebraska, supra*, at 399, 67 L.Ed. at 1045, the equal protection clause of the Fourteenth Amendment, *Skinner v. Oklahoma, supra*, at 541, 86 L.Ed. at 1660 and the Ninth Amendment, *Griswold v. Connecticut* (1965) 381 U.S. 479, 496, 14 L.Ed.2d 510, 522, 85 S.Ct. 1678.

California has also recognized the importance of a parent's right to raise one's own children in the case of *In re B.G.* (1974) 11 Cal.3d 679, 114 Cal.Rptr. 444, 523 P.2d 244, wherein is stated on page 688 of the California Reporter "The interest of a parent in the companionship, care, custody and management of his children is a compelling one ranked among the most basic of civil rights and the state, before depriving a parent of this interest, must afford him adequate notice and an opportunity to be heard." In *In re Gualt* (1967) 387 U.S. 1, 30-31, 87 S.Ct. 1428, 1445-46, 18 L.Ed.2d 527, the Court states that "Notice of the specific facts upon which removal of a child from parental custody is predicated is fundamental to due process."

VII

MAY CALIFORNIA ABRIDGE BASIC FEDERAL CONSTITUTIONAL GUARANTEES BY THE USE OF A FAULTY NO CONTEST PLEA

In order to reject a facially valid claim that jurisdiction did not lie with the trial court due to a defective petition, the California Court of Appeal cited the case of *In re Troy Z.* (1992) 3 Cal.4th 1170, 1181. *In re Troy Z.* stated that a plea of no contest to allegations under Section 300 of the California Welfare and Institution Code admits all matters essential to the court's jurisdiction over the minor and waives a parent's right to challenge on appeal the legal applicability of Section 300 to his conduct.

The California Court of Appeal, however, inappropriately cited this case as authority for the case at hand for the following reasons. In *In re Troy Z.* the trial court made an extensive and thorough inquiry regarding the entry of the no contest plea. That was not the case of the case at hand. At page 1179 of 3 Cal.4th it is reported that "The Court proceeded to explain to the parents the various rights they would waive by pleading no contest to the allegation." Also at page 1179 of the same case it was reported that the trial court in *Troy Z.*, "also recalled the extensive discussion that took place concerning the consequences of the plea to Section 300." In the case at hand the record is devoid of any such explanation as to the waiver of rights or as to the consequences of such a waiver. Furthermore, in *Troy Z.* there was no language

barrier as there existed in the case at hand. The issue of the language barrier goes to the very heart of a knowing and intelligent waiver of rights and as such should have alerted the trial court to take adequate steps to ensure that the Appellant clearly understood what he was admitting.

Another crucial distinction between *In re Troy Z.* and the case at hand was that in *Troy Z.* the parties were challenging the no contest plea on the basis of "guilt or innocence." As the Court stated on page 1179, "The issues presently sought to be raised do to attack the proceedings resulting in the plea. Rather, defendant's contention that the prior conviction was a misdemeanor rather than a felony, and the related contention that counsel was incompetent, go solely and directly to the question whether he was in fact guilty of the charged offense" The Appellant in this case was not challenging the no contest plea on the issue of "guilt or innocence," but rather whether the proceedings leading to the plea were legal. On this point rests the most obvious distinction between the case at hand and the relied upon authority. Reliance by the Court on the cited case to abridge basic federal constitutional rights cannot be tolerated. It is also obvious that a no contest plea which was not a knowing and intelligent waiver of rights should not be allowed to serve as a vehicle to cure basic jurisdictional defects which existed at the inception of the case. But through the use of *In re Troy Z.* that is precisely what the California Court of Appeal is attempting to do.

VIII

SHOULD CALIFORNIA HAVE A STANDARD PROCEDURE IN DEPENDENCY COURT PROCEEDINGS TO ENSURE THAT A NO CONTEST PLEA WAS A KNOWING AND INTELLIGENT WAIVER OF BASIC CONSTITUTIONAL RIGHTS

As the specific facts in this case illustrate, California will continue to use a no contest plea as a vehicle to cure basic jurisdictional defects by means of its interpretation of *In re Troy Z.* It is also obvious that the California Court of Appeal utilizes the cited authority of *In re Troy Z.* when the facts of the case on appeal do not necessarily fit the fact pattern of the particular case on appeal. The California Court of Appeal appears to first look for a vehicle to cure glaring constitutional defects, in this case a no contest plea. Then it applies a fact pattern which is not appropriate and then states that the plea cured all jurisdictional defects even though the facts were completely different than the case on appeal. If California is not required to follow a standard procedure for advisement and waiver of constitutional rights in a dependency court setting, then other parents similarly situated will suffer similar constitutional injustices.

Although a dependency court hearing is civil in nature based on the seriousness of the allegations and the important constitutional rights in jeopardy, it should be incumbent on a trial court to verbalize each charging allegation and not merely refer to nondescript paragraphs when

entering a no contest plea. In the case at hand the record clearly reflects that the inquiry was not thorough enough to have shown that the plea was a knowing and intelligent waiver of rights (R.T. p. 47 lines 17-28 and p. 48 lines 1-18). It is also apparent from the decision of the Court of Appeal that any questioning by a trial court is sufficient to establish a knowing and intelligent waiver of rights. It is time to recognize that ordinary citizens should be afforded the same constitutional protections given to criminal defendants by requiring a standardized procedure that ensures that a no contest plea in a dependency court setting is in fact a knowing and intelligent waiver. The standardized procedure should require that a thorough inquiry is made by the judicial officer. Justice can be economical but it should not be bankrupt. When due process is at stake, a trial court must be required to ascertain if a waiver of constitutional rights was made knowingly and intelligently. The trial court's inquiry must be thorough and not merely a reference to non-descript paragraphs in a charging document.

IX

CONCLUSION

Unless the Supreme Court addresses these issues of violation of basic constitutional rights through nonstandardized court procedures relating to the entry of no contest pleas in dependency court proceedings, then other parents similarly situated will suffer the same violation of their constitutional rights of due process and equal

protection and rights guaranteed by the Ninth Amendment. The Petitioner, Antonio Rios, therefore, respectfully requests that this Court agree to hear his petition to reverse the judgment of the Court of Appeal.

April 15, 1996.

Respectfully submitted,

NICOLAS J. ESTRADA

Counsel of Record for Petitioner
ANTONIO RIOS

APPENDIX A

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

Court of Appeal - Second Dist.
FILED
OCT 31 1995
Joseph A. Lane Clerk
_____ Deputy Clerk

In re MARIA R. et al., Persons Coming Under the Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,
Plaintiff and Respondent,
v.
ANTONIO R.,
Defendant and Appellant.

B083696
(Super. Ct. No. BK06067

APPEAL from orders of the Superior Court of Los Angeles County, James Ballew, Victor Reichman, Martha Bellinger, Debra Losnick, Temporary Judges (pursuant to Cal. Const., art. VI, § 21), and John Henning, Judge. Affirmed.

Nicolas J. Estrada for Defendant and Appellant.

De Witt W. Clinton, County Counsel, Frank J. Da Vanzo, and Sterling Honea, Principal Deputies County Counsel, for Plaintiff and Respondent.

We reject Antonio R.'s attack on the juvenile court's jurisdiction to award sole custody of his children to their mother.

FACTS

On January 15, 1992, the Department of Children and Family Services filed a petition to have Maria R., Betty R., Alma R. and Helen C. declared dependent children under section 300 of the Welfare and Institutions Code.[1] Among other things, the petition alleged that Antonio, the children's father,[2] had used inappropriate physical discipline on Maria and Betty on several occasions, that Maria C., the children's mother, had failed to protect the, and that conflict and violent confrontations between the parents created an environment detrimental to the minors' physical and emotional well-being and safety.[3]

At the January 16 detention hearing, the court found a prima facie case for detaining the children, then released them to Maria's custody on condition that she remain at a shelter for battered women. Antonio was ordered to stay away from Maria and the children pending further

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[1] Unless otherwise stated, all section references are to the Welfare and Institutions Code. All rule references are to the California Rules of Court.

[2] When Helen was born, Antonio denied paternity. During these proceedings, DNA testing established to a reasonable certainty that Helen is Antonio's child.

[3] Although charges of sexual misconduct involving Antonio and one or more of the minors were raised at the beginning of these proceedings, they were never included in either the original or the amended petition ultimately sustained by the juvenile court.

orders. DCFS was directed to provide family unification services, to arrange physical and psychological examinations for the children, and to arrange for Maria to receive battered spouse counseling.

Antonio requested visitation and on March 12 the court set a hearing for March 16 to decide that issue (the physical exams having shown no evidence of molestation). On March 16, the minors' attorney told the court the girls were frightened and emotionally battered by their father and the interviewing psychologist, Dr Nancy Kaser-Boyd, submitted a report recommending that "no visitation occur unless [Antonio] avails himself of a[n Evidence Code section] 730 evaluation, or shows some good faith to enroll in therapy, and . . . attend[s] and participate[s] for a period of approximately six months. After Antonio's attorney informed the court that his client was "not prepared to [have a 730 evaluation] at [that] time," the court denied Antonio's request for visitation.

On May 7, following mediation, the court noted some progress, continued the mediation to June 11 and, in the interim, permitted Antonio to have monitored visits with the children. On June 11, Antonio and his attorney both failed to appear for the continued mediation. In their absence, Maria and her attorney agreed to submit to the court's jurisdiction. On July 23, Antonio appeared and entered a plea of no contest to the petition (orally on the record after signing a waiver form). On that date, the court sustained the petition as amended, found clear and convincing evidence of substantial danger to the physical and emotional health of the minors requiring removal from the parents, and ordered the children placed with the mother under DCFS's supervision, with their whereabouts to be kept confidential. An Evidence Code section 730 evaluation was ordered for Antonio and the court permitted his monitored visits to continue (and

directed DCFS to provide recommendations regarding future visits and counseling).

On October 22, Antonio appeared but his attorney did not. Antonio told the court he had not had the evaluation and that his visitation had not gone as ordered. A progress report filed that day stated that, after two visits, the children refused visitation and that, in violation of the court's earlier order, Antonio had telephoned the children. On December 2, Antonio was again ordered to cooperate in the evaluation process and DCFS was ordered to arrange visitation regardless of the minors' consent.

On January 21, 1993, the court considered a report showing that Antonio had two visits with the children, that he had sought information from them concerning their confidential whereabouts, that the children refused to participate in subsequent visits, then suffered "extreme distress" at two later forced visits. The social worker recommended that the children remain with their mother, that all parties continue counseling, and that Antonio's visits be stopped until the children indicated a willingness to participate.

The court also considered Dr. Kaser-Boyd's report of her evaluation, which stated that Antonio was a decent man with genuine affection for his children who unfortunately had some compulsive and slightly paranoid tendencies. Antonio had adamantly denied responsibility for any family problems, and blamed his wife (about whom he had nothing positive to say) for everything. He would not believe his children would choose not to see him and he blamed DCFS and others for influencing their decision not to visit with him. Dr. Kaser-Boyd concluded that if Antonio was able to admit his shortcomings and if the minors' therapists agreed, monitored visits could proceed. The court ordered DCFS to obtain a recommendation from the minors'

therapists about visitation and, in the interim, ordered that Antonio's visits could proceed only with the consent of the minors' therapists.

On March 18, the date originally set for a contested hearing, further mediation resulted in a continuance of the hearing and orders that the five therapists involved in treating the various family members consult and submit a comprehensive plan for individual and conjoint therapy. By July 28, the therapists had yet to consult and the attorneys, with the help of a mediator, put together a plan for conjoint therapy at a family counseling facility. The court ordered that visitation would be arranged in conjunction with the conjoint therapy and ordered Maria, Antonio and the children to participate in the counseling.

A progress report received by the court on January 26, 1994, stated that, despite Maria's cooperation, the minors had a "strongly expressed position" of "not wanting to be present in a family session with their father." In the social worker's opinion, "there cannot be a therapeutic process [where the] minors are not willing to engage in one .... [¶] It may be best for [Antonio] to ... wait for that possible time when the minors individually and out of their own free will may want to reconcile with him. A it stands now, ... they continuously express their rejection of their father." The social worker recommended termination of jurisdiction.

On January 26, the court awarded sole custody to Maria, terminated jurisdiction, ordered that visits with Antonio would be held only with the minors' consent, and encouraged Maria to encourage the children to reconsider and permit their father to visit them. On February 18, the order terminating jurisdiction was signed by the court. Antonio appeals from that order.

DISCUSSION

Antonio contends the trial court based its jurisdictional findings on a petition with insufficient charging allegations and that, therefore, the court's jurisdictional and dispositional orders are void We disagree.

By his no contest plea, Antonio waived his right to challenge the dependency court's jurisdiction. (*In re Troy Z,* (1992) 3 Cal.4th 1170, 1181 [a plea of no contest to allegations under section 300 admits all matters essential to the court's jurisdiction over the minor and waives a parent's right to challenge on appeal the legal applicability of section 300 to his conduct].) Antonio's efforts to avoid this result by claiming his plea was not knowing and voluntary (that he was "duped" into signing a form he believed pertained only to his visitation rights) is simply not supported by the record

The waiver form is clearly labeled as such and the rights waived (and the effect of the waivers) are clearly set forth. On its face, the form shows that Antonio had the assistance of a Spanish language interpreter when he reviewed the form, and it also reflects a joinder by Antonio's lawyer. The reporter's transcript provides further support for a knowing and voluntary waiver by reflecting the trial court's questions and Antonio's answers about his understanding of the proceedings.[4] No more is required.

In any event, even without the waiver, Antonio's failure to appeal from the dispositional order makes the

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[4] The court asked Antonio whether the initials on the form were his ("yes"), whether the signature on the form was his ("yes"), whether he had read each paragraph before he signed the form ("yes"), whether he had discussed the form with his attorney ("yes"), whether each paragraph was translated for him by the Spanish interpreter ("yes"), and whether he had any questions about the form ("no").

present challenge untimely (*In re Rubin P.* (1991) 2 Cal.App.4th 306, 313, fn. 6; *In re Megan B.* (1991) 235 Cal.App.3d 942, 950; rule 39(b)) and, even if it was timely, the claim would fail on the merits. From the beginning, the petition was based on charges of inappropriate physical discipline and violent confrontations between the parents, and the fact that the molestation charges were dropped is wholly immaterial to the court's jurisdiction over the children and their parents. (§§ 300, subds. (b), (c), 332, subd. (f); rule 1407(a)(6); *In re Basilio T.* (1992) 4 Cal.App.4th 155, 168-169)[5]

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

VOGEL (Miriam A.), J.

We concur:

SPENCER, P.J.

ORTEGA, J.

---

[5] Although it is not altogether clear, Antonio's brief also appears to challenge the sufficiency of the evidence to support the court's findings. As our recitation of the facts demonstrates, there was ample evidence to support the trial court's findings and the contention is wholly without merit. (*In re Jesse B.* (1992) 8 Cal.App.4th 845, 851; *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 419-420; *In re Angelia P.* (1981) 28 Cal.3d 908, 924.)

APPENDIX B

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 1 DATE: 11/20/95

Nicolas J. Estrada
1611 South Catalina Ave.
Suite 300
Redondo Beach, CA. 90277

RE: Los Angeles, County of
VS.
Rios, Antonio
In Re: Maria, Alma, Betty, Helen Minors
2 Juvenile B083696
Los Angles No. BK06067

THE COURT:

PETITION FOR REHEARING IS DENIED.

APPENDIX C

Second Appellate District, Division One, No. B083696
S050509

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED
JAN 17 1996
Robert Wandruff Clerk

Deputy

In Re MARIA R., A Person Coming Under the Juvenile Court Law LOS ANGELES CO. DEPT. OF CHILDREN AND FAMILY SERV., Respondent

v.

ANTONIO R., Appellant

Petition for review DENIED.

LUCAS
Chief Justice

APPENDIX D

EXCERPTS FROM REPORTER'S TRANSCRIPT

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES SITTING AS A JUVENILE COURT

Department No. 408

Hon Martha Bellinger, Commissioner
No. BK06067 - DPSS

In The Matter of Maria, Betty and
Alma Rios and Helen Chargolla,

Persons under the age of 18 years

January 16, 1992
February 25, 1992
March 12, 1992
March 16, 1992
May 7, 1992
June 11, 1992
July 23, 1992
October 22, 1992
December 2, 1992
January 21, 1993
March 18, 1993
May 10, 1993
July 28, 1993

[R.T. Page 4, Lines 15-28]

* * *

MR. BEDELL: I read the application for petition, police report, a couple times over the lunch hour. The application for petition speaks about a sexual molest by the father. However, that's not actually alleged in the petition. The petition alleges sleeping — The father and his daughter Betty sleeping in the same bed. I can't imagine under what subsection that would arise to a jurisdictional state. It may be insensitive, it may be not promoting good family relations, but I don't see where it creates a risk of harm to the child.

I see where the children have made statements in the report — they have each denied any physical or sexual abuse. The only statements that I found that provided the basis for any jurisdictional issue was the mother's statements of conflict between her and the father in the home.

* * *

[R.T. Page 8, Lines 13-21]

* * *

MR. SHIELL: If I might address that, it's just a mater of filing a first amended and with this information, which I just got in the last half an hour from Ms. Teske, it's a matter of contacting the worker and having it typed up and we'll have an allegation that the minor Helen was sexually abused on several occasions, including but not limited to — and I'll indicate what the disclosures were and that will be a prima facie case for detention, being that she's only four years old.

* * *

[R.T. Page 16, Lines 2-4 and 5-10]

* * *

MR. SHIELL: I expect we'll be filing an amended petition. As I indicated, I spoke with the court officer and when that happens parties will be notified.

THE COURT: How soon will that be filed? Marla, can you give me an indication? If we can accelerate it, I'd like to get it done the first part of the next week if we could and the only reason being I'd like Mr. Bedell to have the opportunity to have that in his hands so he knows the specific allegations —

* * *

[R.T. Page 47, Lines 17-28]

* * *

THE COURT: Number 11, back on Rios.

MS. ROGERS: Theresa Rogers, private counsel for the father, Mr. Rios, who's also present.

SPANISH INTERPRETER: Spanish interpreter for the father, Dora Truban, Oath on file.

MR. SHIELL: Robert Shiell for the Department.

THE COURT: I need to ask a couple of questions of the father at this time. Sir, are those your initials?

MINORS' FATHER: Yes.

THE COURT: And on this page also?

MINORS' FATHER: Yes.

THE COURT: Is that your signature at the bottom?

[Continues to R.T. Page 48, Lines 1-18]

MINORS' FATHER: Yes.

THE COURT: And on the third page as well?

MINORS' FATHER: Yes.

THE COURT: Before you signed this did you read each paragraph?

MINORS' FATHER: Yes.

THE COURT: And did you understand each paragraph?

MINORS' FATHER: Yes.

THE COURT: Did you have an opportunity to discuss it with your attorney as well?

MINORS' FATHER: Yes.

THE COURT: And these paragraphs were all interpreted for you by the Spanish interpreter assisting you today, is that correct?

MINORS' FATHER: Yes.

THE COURT: Do you have any questions about this agreement?

MINORS' FATHER: No.

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